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C O N F I D E N T I A L SECTION 01 OF 02 BAGHDAD 003377

SIPDIS  
NOFORN

DEPARTMENT FOR NEA/I

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TAGS: PREL PGOV PTER KDEM KJUS I2

SUBJECT: PRT SALAH AD DIN: GOI INTERFERENCE IN PROVINCIAL GOVERNOR STANDOFF

REF: A. BAGHDAD 3181  
1B. BAGHDAD 2847

Classified By: CDA Robert Ford for reasons: 1.4 (b) and (d).

11. (U) This is a PRT Salah Ad Din reporting cable.

12. (C) SUMMARY: Following a two month standoff with the GOI central Government, the Salah Ad Din (SaD) Provincial Council (PC) is poised to forcibly remove the former Provincial Governor (PGOV) of SAD--which it voted from office on October 27--from the official residence the PGOV is still occupying. The PC has waited in vain for the GOI Presidency Council to issue the statutorily required decree authorizing the new governor to take office. Since there has been no action by the GOI, the PC is considering forcibly removing him, perhaps during the first week of January. The PC believes the GOI inaction--orchestrated primarily by Sunni Tawafiq members in parliament--to be motivated in part by a desire to support the ousted Governor in hopes of garnering additional votes in the March 7 elections. Amid confusion as to the Presidency Council's role and obligation, Embassy will ask Supreme Court Chief Justice Medhat to clarify to the Presidency Council that all legal questions have been resolved, and their duty is to adhere to the law. END SUMMARY.

TENSIONS RATCHET UP

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13. (C) PRToff and partnered U.S. Brigade Combat Team (BCT) Commander met with PC Chair Ahmad Abd Allah Abd (aka Abu Mazin) and his legal advisor on December 21-22 to stress the importance of resolving the dispute with ousted PGov Mutashar Hussein Illawee in the Iraqi Court system (refs A and B). They encouraged Abu Mazin to appeal to the Federal Supreme Court (FSC) to rule on the Presidency Council's refusal to issue a Presidential Decree confirming the election of the new governor. (NOTE: Article 26 of the Provincial Powers Law (PPL) states: "A Presidential Decree for the appointment of the Governor shall be issued within 15 days from the date of his election." END NOTE). However, the PC Chair and most PC members said that they believe they have allowed their legal system enough time to resolve this peacefully and want to take action.

14. (C) The PC held two press conferences on December 21 and 22, announcing that they had decided to remove Mutashar, by force if necessary. In several private meetings with the PC Chair over December 22-27 PRToff and BCT Commander stressed that proper legal procedure requires the PC to obtain an enforcement order from the FSC for Mutashar's disregard for its ruling. SaD Chief Criminal Judge Faisal told PRToff on December 28 that no judge in SaD would touch the entire matter, and that anything court-related would have to go through Baghdad.

15. (C) PC Chair Abu Mazin asked PRToff and BCT Commander to

tell their respective chains of command that the PC has decided to act and needs U.S. help to pressure the GoI to "do the right thing." He continued that he was ready to give the order to the Provincial Chief of Police (PCoP) Hamid (IIP) soon to test his loyalties. (NOTE: It is not clear that PC Chair has authority to order police to take such action since this is an executive branch power. END NOTE). The BCT Commander believes Hamid would indeed execute such an order, but in meetings with PCoP and General Salah of the 4th Infantry Division of the Iraqi Army on December 23 BCT Commander persuaded both to stand down to preserve Rule of Law and peace. He believes these actions, along with other discussions he has had with Abu Mazin, have bought some time to work toward a peaceful resolution to the dispute. Qto work toward a peaceful resolution to the dispute.

POTENTIAL FOR VIOLENCE

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¶ 6. (C) PC member and retired BG Abdullah Hussein Jebara told the BCT Commander and PRToff on December 23 that he was very nervous about the PC moving against Mutashar and the potentially violent implications they would have for Tikrit and the province. He told the BCT Commander "General Odierno knows me. Please tell him that we are serious about this." (NOTE: General Abdullah knows General Odierno from when the latter was 4th Infantry Division Command in SaD. END NOTE.)

PRESIDENCY COUNCIL IMPASSE

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¶ 7. (C) The faceoff between the ousted PGOV and the PC follows two months of central government opposition to the

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removal of the Governor. This opposition has included an October 28 letter from the PM purporting to reinstate the Governor and the refusal of the GOI Presidency Council to issue the required presidential decree for the appointment of the new Governor within 15 days of his October 27 election. In response, the PC has sent four separate official requests to the Presidency Council between October 27 and December 13 requesting that the Presidency Council issue the required decree affirming the election of the new governor. On December 9 Presidency Council Chief of Staff Naseer al-Ani told Embassy Poloff that it is deferring action at the request of the COR Speaker to allow the COR to take unspecified action in this matter.

¶ 8. (C) On December 22 PRToffs spoke with the U.S. Institute for Peace Iraqi Representative Ra'ad Khutab, who has been part of the behind-the-scenes effort to resolve the differences between Mutashar, Abu Mazin, the Provincial Council, and the IIP. Khutab claims that the PC has drafted a resolution under which Mutashar resigns his position and remains out of politics for five years in exchange for no further action against him, which the former soundly rejects. According to Khutab, the IIP has indicated that they intend to keep Mutashar in office until at least February so that he can pull in the Samarra vote for the party in national elections in order to gain seats in the COR.

¶ 9. (C) On December 30, the Charge met with Presidency Council Chief of Staff Naseer al-Ani. Al-Ani reported that while the decree confirming Khalid Hassan Mahdi Salih as the newly elected governor is ready for signature, none of the three Presidency Council members will sign until all legal and political roadblocks are gone. As reported in ref B, the legal roadblock centers around whether the Federal Supreme Court (FSC) decision is valid since there is an appeal currently pending at the Rusafa Federal Appeals Court saying that PC Chair Abu Mazin is disqualified due to lack of required education. The political roadblock is that CoR Speaker Sammarai'e wrote to President Talabani to say that the CoR did not agree with Mutashar's removal and wanted to review the situation.

According to al-Ani, the CoR is the source of all provincial councils' authority and therefore has oversight. Chief Justice Medhat told Embassy Rule of Law (RoL) Officer on December 21 that under Article 7, Section 8, paragraphs 4 and 5 of the Provincial Powers Law a Presidential decree is not needed to remove the Provincial Governor, and that politics was getting in the way of RoL. (NOTE: Embassy's legal opinion is that under the Provincial Powers Law, PCs are independent bodies not subject to CoR oversight. END NOTE).

COMMENT

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¶10. (C) PRT Comment: According to Khutab, this is all a part of the political strategy of the big players in Baghdad, including COR Speaker Samarrai'e and PM Maliki, to maintain influence in the north. SaD appears to be a key piece to that strategy, as the religious parties have more or less sewn up Diyala, but have no influence anywhere else in the north except SaD. In other words, if the Governor goes, so does the IIP hope for influence in SaD.

¶11. (C) Comment continued: Less than two years after the enactment of the PPL, the provincial government in SaD was just beginning to make significant strides toward defining its role and asserting itself vis-a-vis Baghdad. The PC is working to adhere to the byzantine legal and political processes, only to have these efforts undermined by Baghdad Qprocesses, only to have these efforts undermined by Baghdad politics. Election-year politics coupled with a history of centralized government are stiff headwinds for an inexperienced PC to challenge successfully. In order to clear away the legal roadblocks (para 9), Embassy's Rule of Law section will engage with Medhat and request that he draft a letter to the Presidency Council informing them that for the purposes of installing the new governor all legal questions have been resolved. PRT will continue to encourage all parties in SaD to follow the legal recourse available to them while emphasizing the need for a peaceful resolution. End Comment.

FORD